

**FILED**  
JUN 15 2010  
By PATRICK E. DUFFY, CLERK  
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

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STEPHEN PATRICK HAFHEY,	)	Cause No. CV 09-175-M-DWM-JCL
	)	
Petitioner,	)	
	)	
vs.	)	FINDINGS AND RECOMMENDATION
	)	OF U.S. MAGISTRATE JUDGE
SAM LAW; ATTORNEY GENERAL)	)	
OF THE STATE OF MONTANA,	)	
	)	
Respondents.	)	

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On December 28, 2009, Stephen Patrick Haffey filed this action for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. He is a state prisoner proceeding pro se.

The matter was stayed on March 10, 2010, to await a ruling by the Montana Supreme Court. On May 4, 2010, the Montana Supreme Court affirmed the trial court's ruling and remanded the case to the trial court for further proceedings on Haffey's pending petition for postconviction relief. On May 17, 2010, Respondents

moved to vacate the stay and dismiss this action. Haffey moved for an extension of time to amend his petition. Neither party responded to the other's motion. On June 15, 2010, Haffey moved to dismiss his petition "without prejudice so that the petitioner may file at a later date." Pet'r Mot. to Dismiss (doc. 14) at 1.

Both parties now having moved to dismiss this action, dismissal is appropriate. There is no need to issue a certificate of appealability because both parties have requested dismissal. Lambright v. Stewart, 220 F.3d 1022, 1026 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

Based on the foregoing, the Court enters the following:

### **ORDER**

1. Haffey's motion for an extension of time (doc. 13) is MOOT.
2. The stay imposed on March 10, 2010, is LIFTED.

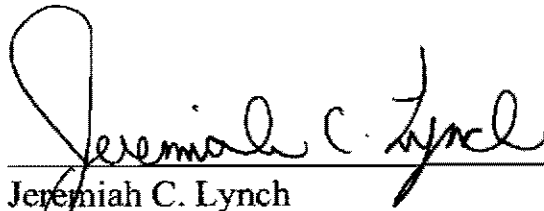
### **RECOMMENDATION**

1. Respondents' motion and Haffey's motion to dismiss (docs. 12, 14) should be GRANTED. The petition should be DISMISSED WITHOUT PREJUDICE.
2. The Clerk of Court should be directed to enter, by separate document, a judgment of dismissal.
3. A certificate of appealability should be DENIED.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &  
RECOMMENDATION  
AND CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Findings and Recommendations within fourteen (14) calendar days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

DATED this 15th day of June, 2010.

  
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Jeremiah C. Lynch  
United States Magistrate Judge